

# **TOWN OF DAVIE TOWN COUNCIL AGENDA REPORT**

**TO:** Mayor and Council members

**FROM/PHONE:** Carol Menke, 797-1050

**SUBJECT:** Resolution

**TITLE OF AGENDA ITEM:**

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE ISSUANCE OF PUBLIC IMPROVEMENT REVENUE BONDS OF THE TOWN OF DAVIE, FLORIDA, IN THE AGGREGATE PRINCIPAL AMOUNT OF \$10,000,000 FOR THE PURPOSE OF FINANCING OR REIMBURSING THE COST OF ACQUISITION, CONSTRUCTION AND EQUIPPING OF CERTAIN CAPITAL IMPROVEMENTS OF THE TOWN, AND PAYING THE COSTS OF ISSUANCE OF THE BONDS; AWARDED THE SALE OF THE BONDS TO FIRST UNION NATIONAL BANK; PROVIDING FOR SECURITY FOR THE BONDS; CONTAINING OTHER PROVISIONS RELATING TO THE BONDS; MAKING CERTAIN COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; AND PROVIDING AN EFFECTIVE DATE.

**REPORT IN BRIEF:**

The Town Council previously approved a 5-year capital improvement program and identified approximately \$13 million in projects that needed to be financed through long term debt. In order to take advantage of the annual bank qualified issuance cap of \$10 million for calendar year 2001, the Town completed a competitive request for proposal process which requires that the closing take place prior to the end of 2001. The three responses which were received by the Town are attached for your review with an accompanying memo summarizing the three proposals and the rationale for recommending the First Union variable rate option.

**PREVIOUS ACTIONS:**

Adoption of the FY2001 - FY 2005 Capital Improvement Program and Resolution R2001-76 noticing the intent of the Town to be reimbursed for capital project costs through the issuance of tax exempt debt, estimated not to exceed \$13,000,000.

**CONCURRENCES:**

The recommended debt agreement has been reviewed by the Acting Budget and Finance Director and by the Assistant Town Administrator who concur on the award.

**FISCAL IMPACT:**

Has request been budgeted?        yes

    If yes, expected cost- \$51,000 (current fiscal year payment only)

    Account Name: Interest Expense

Additional Comments: Interest only will be due on April 1st in current fiscal year. Principal and interest will be payable in future fiscal years and must therefore be included in future debt service budgets.

**RECOMMENDATION(S):**

Motion to approve the resolution.

**Attachment(s):**

    Memo

    Request for Proposal Responses

    Resolution

# MEMORANDUM

## Department of Budget and Finance

To: Tom Willi, Town Administrator

Through: Ken Cohen. Assistant Town Administrator

From: Carol Menke, Acting Budget and Finance Director

Date: 12/14/01

Subject: \$10,000,000 Public Improvement Revenue Bond Proposals

On December 7, 2001, the Town received three proposals in response to the Town's \$10,000,000 Bank Qualified Financing RFP. The three proposals (copies attached) are from SunTrust, First Union, and Kislak National Bank. The Kislak National Bank proposal was considered non responsive as it only proposed to finance less than \$2 million of the requested \$10 million through 5 and 7 year Master Lease-Purchase Agreements. The SunTrust and First Union proposals were responsive and competitive and are summarized below.

The SunTrust proposal is for a 10 year fully amortizing (mortgage style) loan at an indicated rate as of December 7, of 4.07%, plus a 12.5% basis point premium should the Town elect a "No prepayment fee" arrangement. SunTrust did not include a variable rate option in its proposal.

The First Union proposal included both a fixed rate option and a variable rate option. The fixed rate option is for a 15 year fully amortizing loan at an indicated rate as of December 7, of 4.69%. The variable rate option is for a 15 year loan at an interest rate of 66.5% of One-Month LIBOR plus 67.5 basis points, adjusted monthly, which as of December 7, was an indicated rate of 2.02%.

After reviewing the proposals, the Assistant Town Administrator and I recommend the First Union variable rate option. The reasons for this recommendation are summarized below.

Although the proposed SunTrust fixed rate is a very attractive rate, the proposed loan term is only 10 years. A majority of the projects being funded with this issue, including the drainage improvements, road improvements, land acquisition, and Potter Park

gymnasium, have a useful life expectancy of substantially greater than 10 years. Therefore, when attempting to match who will benefit from the improvements, it is more equitable to today's taxpayers to spread the payment over a longer term, if available.

The First Union proposal did offer a longer term, 15 years, than the SunTrust proposal and is

more in line with the timeframe the Town has financed similar types of improvements in the past.

The First Union fixed rate option, at 4.69% as of December 7, was not as attractive as the SunTrust rate (partly due to the longer term). Also, it was not offered without a prepayment penalty which could limit the Town in the future if this issue were ever to be considered for refinancing/prepayment.

The First Union variable rate option, at 2.02% as December 7, was the lowest current rate offered in any of the proposals. Under a variable rate option the Town would, of course, assume the interest rate risk and would need to manage the risk appropriately as market conditions change. The variable rate debt has no prepayment penalty, giving the Town flexibility for the future. The variable rate option also blends well with the Town's existing debt structure as two previous variable rate issues will be repaid during the first quarter of fiscal year 2003.

After considering these facts the Assistant Town Administrator and I agree that the variable rate option proposed by First Union is in the best interest of the Town at this time. If you have any questions or need any additional information please just let me know.

---

**SUNTRUST**  
VIA HAND DELIVERY

December 7, 2001

Herb Hyman  
Procurement Manager  
6591 Orange Drive  
Davie, Florida 33314

Reference: Commitment for financing of various capital projects for the Town of Davie

Dear Mr. Hyman:

SunTrust Bank, South Florida (the "Bank") is pleased to submit a commitment to lend The Town of Davie, Florida (the "Borrower") under the following terms and conditions:

- Borrower:** The Town of Davie, Florida
- Facility:** Term loan of up to \$10,000,000
- Purpose:** Finance various capital projects based on the Town's capital plan.
- Security:** The Town will provide a Covenant to Budget and Appropriate from all available non-ad valorem revenues.

**Interest Rate & Repayment Terms:**

The Town will draw the entire amount at date of close.  
Interest Rate: A fixed rate will be applied two days prior to closing based on:  
(98% of the 7-year US SWAP Ask Rate (as of December 7, 2001 = 5.56%) plus  
70 basis points) divided by 1.51. **As of December 7, 2001 the equivalent rate is  
4.07%.** Quarterly Principal and Interest payments beginning October 1<sup>st</sup>, 2002  
based on a 10-year fully amortizing (Mortgage Style) loan. A 12.5% basis point  
premium shall be added, should the Town choose a "No prepayment fee" option.

The interest rate shall be subject to the Bank's published rates and terms. The interest shall be calculated on the basis of a 360-day year with twelve (12) months.

**Prepayment Fee:**

Should the Town choose a "No prepayment fee option" a premium of 12.5 basis points shall be added to the stated interest rate. Otherwise, upon two business days' prior written notice to the Lender, the Borrower may prepay amounts owing hereunder at any time and from time to time. Such prepayment notice shall specify the amount of the prepayment which is to be applied. In the event of prepayment, the Borrower may be subject to pay the Lender an additional fee, determined in the manner provided below, to compensate the Lender for all losses, costs and expenses incurred in connection with such prepayment. The fee shall be equal to the present value of the difference between (1) the amount that would have been realized by the Lender on the prepaid amount for the remaining term of the loan at \_\_\_\_\_% (the Federal Reserve H.15 Statistical Release rate for fixed-rate payers in interest rate swaps as released effective on the origination date of the Note) and (2) the amount that would be realized by the Lender by reinvesting such prepaid funds for the remaining term of the loan at the Federal Reserve H.15 Statistical Release rate for fixed-rate payers in interest rate swaps, interpolated to the nearest month, as released two business days prior to the loan repayment date; both (1) and (2) discounted at this same rate. **Should the present value have no value or a negative value, the Borrower may prepay with no additional fee.** Should the Federal Reserve no longer release rates for fixed-rate payers in interest rate swaps, the Lender may substitute the Federal Reserve H.15 Statistical Release with another similar index. Lender shall provide the Borrower with a statement explaining the calculation of the premium due, which statement shall, in the absence of manifest error, be conclusive and binding. Partial prepayments may be made according to the same calculation methodology described above. Any partial prepayment hereof shall not postpone the due dates of, or relieve the amounts of, any scheduled installment payments due hereunder. Amounts repaid hereunder may not be re-borrowed.

**Loan Fee:** None

**Covenants:** All available non-ad valorem revenues after essential services and general obligation debt must be equal to or greater than 1.25x.

The Bank will allow parity debt provided that revenues securing this facility can cover the debt service for all pledged debt by 1.25x

**Legal Fees:** Borrower will be responsible for legal fees and expenses. This includes the Bank's estimated counsel fees of \$2,000 for a review only of documents prepared by bond counsel.

**Validity of Commitment:**

The terms of this commitment will be valid for acceptance by Borrower until December 31, 2001, on which date this commitment expires, unless extended in writing by the Bank.

**Respondent Institution Information:**

SunTrust Bank, South Florida  
Main office: 515 East Las Olas Blvd.  
Ft. Lauderdale, FL 33301

**Contact Officer:**

Michael P Miller, Relationship Manager  
SunTrust Bank, South Florida  
515 East Las Olas Blvd., 7th Floor  
Ft. Lauderdale, FL 33301  
Telephone: (561) 835-2677 Facsimile: (561) 835-2640

Secondary: Dane Sheldon, Portfolio Manager  
SunTrust Bank, South Florida  
515 East Las Olas Blvd., 7th Floor  
Ft. Lauderdale, FL 33301  
Telephone: (954) 765-7605 Facsimile: (954) 765-7240

**Additional Conditions:**

"Qualified Tax-Exempt Obligation" shall have the same meaning as in Section 265(b)(3) of the Internal Revenue Code (Code). The obligation must qualify for the Preference Reduction Rate of 20% as defined below.

The Fixed rate shall be adjusted, as set forth below, in the event of a change in the Qualified Tax-Exempt status of the obligation, the Maximum Corporate Tax Rate, or the Preference Reduction Rate.

Interest Rate if Loan Becomes Taxable. If the loan is deemed a "Qualified Tax-Exempt Obligation" whereby the interest earned on the loan is excluded from the gross income of the Bank when determining Federal and State tax liability, and the loan is issued at a tax exempt rate but later the interest on the loan becomes taxable (i.e., ceases to be a "Qualified Tax-Exempt Obligation") for whatever reason, then the loan will bear interest from the earliest effective date as of which interest payable on the loan is includable in the gross income of the Bank at a Fixed Rate per annum equal to the Fixed Rate times 1.54 (the "Taxable Rate.") The Borrower shall also pay any additions to tax, penalties, and any interest on the loan and

its gross income for Federal Income Tax purposes, and any arrears in interest resulting from a determination of taxability. Any penalties in the form of interest or otherwise shall be paid by the Borrower on the next succeeding interest payment date.

The Fixed rate shall be adjusted automatically as of the effective date of any change in the Maximum Corporate Tax Rate, presently 35%, or in the Preference Reduction Rate, presently 20%, (hereinafter defined) based upon the following calculations. Provided, however, if the loan is not a Qualified Tax-Exempt Obligation within the meaning of Section 265(b)(3) of the Code on the date of funding, or if the loan at any time subsequent to funding no longer qualifies as a "Qualified Tax-Exempt Obligation," then the Preference Reduction Rate (hereinafter defined) shall be adjusted as of the date of funding of the loan or as of such subsequent date, as the case may be.

Upon the occurrence of any of the foregoing events, the Fixed rate shall be adjusted to the product obtained by multiplying the Fixed rate by a fraction, the numerator of which is equal to the sum of (i) the product of the "Fully Taxable Equivalent" times one minus the Maximum Corporate Tax Rate in effect as of the day of adjustment, plus (ii) the TEFRA Adjustment (hereinafter defined) in effect as of the date of adjustment, and the denominator of which is equal to the sum of (i) the product of the "Fully Taxable Equivalent" times one minus the Maximum Corporate Tax Rate in effect as of the date of funding of the loan plus (ii) the TEFRA Adjustment (hereinafter defined) in effect as of the date of funding of the loan.

For the purpose hereof: (1) "TEFRA Adjustment" means an adjustment equal to the product of the following: Cost of Funds multiplied by the applicable Maximum Corporate Tax Rate multiplied by the applicable Preference Reduction Rate; (2) "Cost of Funds" means one hundred (100) multiplied by a fraction, the numerator of which is equal to the total interest expense of SunTrust Banks, Inc., for the immediately preceding tax year and the denominator of which is equal to the average total assets of SunTrust Banks, Inc., but at no time will be determined to exceed the cost of Fed Funds; (3) "Preference Reduction Rate" means the percentage reduction to be applied to the amount allowable as a deduction under Chapter I of the Code with respect to any financial institution preference item (as such term is defined in Section 291(e) of the Code); and (4) "Fully Taxable Equivalent" means the Fixed Rate times 1.54 expressed as a number and not as a percentage.

Arbitrage Responsibility. The Borrower shall assume whatever responsibility and take whatever action is necessary to assure that the loan will not constitute an "Arbitrage Loan" under the provision of Section 148 of the Code. Additionally, the Borrower shall covenant to comply with any and all rebate requirements contained in Section 148 of the Code.

Interest Rate Limitation. If required, the Borrower shall take whatever action is necessary in order to comply with the provisions of Section 215.84, Florida Statutes, relating to maximum rate of interest including, but not limited to, the filing of a request with the State Board of Administration for authorization of the interest rate provided herein, if such interest

rate is in excess of the maximum rate.

The Borrower shall comply with and agree to such other covenants, terms, and conditions, that may be reasonably required by the Bank and its counsel and are customary in municipal financings of this nature. These covenants would include, but not be limited to, covenants regarding compliance with laws and regulations, the submission of audited financial data to the Bank in a timely manner, events of default including failure to make payments, failure to perform any covenant, and the filing of bankruptcy by the Borrower; and remedies in the event of default, including acceleration.

It is understood that the commitment set forth herein is conditioned upon the accuracy of information provided to the Bank by the Borrower and the continued financial strength of the Borrower. Any misrepresentation or false statement of material fashion made by the Borrower to induce this offer, or any material adverse change in the financial condition of the Borrower will be sufficient cause for the Bank to terminate this commitment.

The Bank at its sole discretion will be allowed to assign or participate all or any portion of this debt obligation to any other financial institution or accredited investor.

The Bank will require an opinion from a qualified Bond Counsel regarding the bank qualified, tax-exempt status of the notes, validity of issuance, enforceability of documents, and other pertinent issues. This commitment is subject to all documentation for the bonds contemplated by this commitment being reviewed and accepted in form and substance by the Bank and its Counsel.

This letter constitutes a commitment on the part of the bank to lend and does not require any additional internal approvals by the bank.

THIS COMMITMENT LETTER OUTLINES THE GENERAL TERMS AND CONDITIONS OF THE PROPOSED LENDING AGREEMENT BETWEEN THE TOWN OF DAVIE AND SUNTRUST BANK, SOUTH FLORIDA. IF THIS OFFER IS NOT ACCEPTED BY THE TOWN OF DAVIE ON OR BEFORE DECEMBER 31, 2001, THE OFFER WILL EXPIRE UNLESS EXTENDED BY THE BANK. IF ACCEPTED, THE FACILITIES MUST CLOSE BY DECEMBER 31, 2001.

We sincerely appreciate the opportunity to serve the Town of Davie and look forward to hearing from you. Please sign below upon acceptance and return the original to my attention. If you have any questions please call me at (954) 765-7708.

Sincerely,



Michael P Miller  
Relationship Manager  
Government Banking



SIGNED AND ACCEPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2001.

**THE TOWN OF DAVIE**

**BY:** \_\_\_\_\_

**AS ITS:** \_\_\_\_\_

First Union National Bank  
FL6005  
Government Banking  
1950 Hillsboro Boulevard  
2nd Floor  
Deerfield Beach, Florida 33442  
954 596-8900



December 6, 2001

Mr. Herb Hyman  
Procurement Manager  
Purchasing Division  
6591 Orange Drive  
Davie, Florida 33314

Dear Mr. Hyman:

First Union National Bank (the "Bank") is pleased to submit the Commitment described below to the Town subject to the following terms and conditions.

**Borrower:** The Town of Davie, Florida

**Amount:** Not to exceed \$10,000,000

**Facility:** Term Loan

**Purpose:** To provide funds to finance or refinance certain Town infrastructure improvements, equipment and facilities.

**Term:** To mature in fifteen (15) years on October 1, 2016. Interest will be due and payable semi-annually on April 1 and October 1 of each year commencing April 1, 2002. Principal payments will be payable annually based on a fully amortizing fifteen-year amortization commencing October 1, 2002 and each October 1, thereafter until October 1, 2016. Interest on the outstanding balance of the loan will be calculated on a 30/360-day basis.

**Security:** The Loan will be secured by a Covenant to Budget and Appropriate from all legally available Non-Ad Valorem Revenues (the "Pledged Revenues").

**Interest Rate:** NOTE: The Town must indicate closing date and interest rate option at the time of acceptance.

**Fixed Rate Option: Bank Qualified Tax-Exempt Obligation: 4.69% \***

\* The above fixed rate is an indication fixed rate based on current market conditions and subject to change. The Bank will set the rate three business days prior to closing at the then prevailing rate. However, should the Town notify First Union by 4:00pm December 7, 2001 that it is the loan provider subject to formal award by Town's council, the rate option selected can be held until closing.

**Variable Rate Option:** This option may be chosen either with or without the interest rate protection outlined below.

**Rate:** 66.5% of One-Month LIBOR plus 67.5 basis points adjusted monthly. LIBOR is that rate as shown on the Telerate System, page 3750. Initial and resets will be based on LIBOR two business days prior to closing and resets. Based on the current LIBOR rate of 2.04% as of 12/06/2001, the City's rate would be 2.02% today.

The City may enter into a separate agreement with First Union Capital Markets Group to fix the interest rate for a period of either five or ten years, after which the loan would convert to a variable rate loan at the rate quoted above (99% of 30-Day LIBOR). Standard breakage fee language would apply to these rates should the City prepay the loan prior to the end of the respective fixed rate period. The following rates are **INDICATION** fixed rates based on current market conditions and subject to change.

	5 year Fixed Rate Loan	10 year Fixed Rate Loan
Rate	4.06%	4.44%

**Prepayment:** Should the Town choose a fixed rate and prepay during the life of the loan, the Town may incur a breakage fee as outlined below.

In addition to principal, interest and any other amounts due under this Note, Borrower shall on demand pay to Bank any "*Breakage Fee*" due hereunder for each Break Event. "*Break Event*" means any voluntary or mandatory prepayment or acceleration, in whole or in part, of principal of this Note occurring prior to the date such principal would, but for that prepayment or acceleration, have become due ("Scheduled Due Date"). For each date on which a Break Event occurs ("Break Date"), a Breakage Fee shall be due only if the rate under "A" below exceeds the rate under "B" below and shall be determined as follows:

Breakage Fee = (Prepay Rate of 12.50% - LIBOR Breakage) x Prepay

- A =** The rate per annum equal to the sum of (i) the bond equivalent yield (bid side) of the U.S. Treasury security with a maturity closest to the Maturity Date as reported by the Wall Street Journal (or other published source) on the date the Interest Rate of this Note was set ("Lock in Date"), plus (ii) the corresponding swap spread of Bank on the Lock in Date for a fixed rate payor to pay Bank the fixed rate side of an interest rate swap of that maturity, plus (iii) .25%.
- B =** A rate per annum equal to the sum of (i) the bond equivalent yield (bid side) of the U.S. Treasury security with a maturity closest to the Maturity Date as reported by the Wall Street Journal (or other published source) on the Break Date, plus (ii) the corresponding swap spread that Bank determines another swap dealer would quote to Bank on the Break Date for paying to Bank the fixed rate side of an interest rate swap of the maturity.
- C =** The sum of the products of (i) each Affected Principal Amount for each Affected Principal Period, times (ii) the number of days in that Affected Principal Period divided by 360 (if this Note uses the Actual/360 Computation) or the actual number of days in the year (if this Note uses the Actual/Actual Computation).

*"Affected Principal Amount"* for an Affected Principal Period is the principal amount of this Note scheduled to be outstanding during that Affected Principal Period determined as of the relevant Break Date before giving effect to the Break Event on that Break Date, and for any prepayment, multiplying each such principal amount times the Prepayment Fraction.

*"Affected Principal Period"* is each period from and including a Scheduled Due Date to but excluding the next succeeding Scheduled Due Date, provided that the first such period shall begin on and includes the Break Date.

*"LIBOR Breakage"* is any additional loss, cost or expense that Bank may incur with respect to any hedge for the fixed rate of this Note based on the difference between the London interbank offered rate (for U.S. dollar deposits of the relevant maturity) available in the London interbank market at the beginning of the interest period in which the Break Date occurs and that which is available in that market on the Break Date.

*"Maturity Date"* is the date on which the final payment of principal of this Note would, but for any Break Event, have become due.

*"Prepayment Fraction"* is a fraction equal to the principal amount being prepaid over the principal amount of this Note outstanding immediately prior to that prepayment or

the Break Date.

"Present Value" is determined as of the Break Date using "B" above as the discount rate.

In addition, a Break Event shall be deemed to occur hereunder if, on any date ("Borrowing Date") after the date hereof but prior to any acceleration of this Note, any advance of principal under this Note is scheduled to be made and that advance fails to be made on that Borrowing Date (whether due to Borrower's default, Borrower's failure to borrow, the termination of any loan commitment, any unsatisfied condition precedent, or otherwise), in which case that Borrowing Date shall be a Break Date, the Affected Principal Amount for that Break Event shall be based on the amount of the failed advance, and the Borrower shall on demand pay to the Bank any Breakage Fee due hereunder for that Break Event.

Breakage Fees are payable as liquidated damages, are a reasonable pre-estimate of the losses, costs and expenses Bank would incur in the event of any prepayment or acceleration of this Note, are not a penalty, will not require claim for, or proof of, actual damages, and Bank's determination thereof shall be conclusive and binding in the absence of manifest error. For any Break Event hereunder, the foregoing Breakage Fee provisions supersede any breakage compensation agreement that Borrower and Bank may have executed with respect to this Note.

#### Conditions

1. The Town by official action, shall approve entering into this commitment and the loan facility described herein; and shall cause any borrowing under this facility to be designated as a "Qualified Tax-Exempt Obligation" pursuant to Section 265(b)(3)(B) Internal Revenue Code of 1986, as amended.

Should subsequent but currently unforeseen events cause any borrowing under this facility to be determined to be a "non-qualified" obligation pursuant to Section 265(b)(3)(B), Internal Revenue Code of 1986, as amended, the Bank shall adjust the interest rate on any outstandings hereunder so that it shall receive the same after tax yield equivalent contemplated as of the time of this commitment.

2. In the event that the interest on any drawing under this Commitment is ever determined to be taxable for purposes of federal or state income taxation, or in the event that any or all of the interest on any drawing under this Commitment is deemed to be included in the gross income of the Bank for federal or state income taxation, or in the event the Bank is unable to deduct any other amounts as a result of purchasing or carrying any borrowings resultant from the Commitment, or in the event of a change in the marginal tax rate applicable to

corporations or the alternative minimum tax rate or in the method prescribed by federal income tax laws for calculating the alternative minimum tax to which the Bank may be subject, or in the event of any action which would otherwise decrease the after tax or taxable equivalent yield to the Bank, the interest on this Commitment shall be subject to a full gross up modification, as determined by the Bank and its counsel. In no event, however, shall the interest rate on this Commitment exceed the maximum rate permitted by law.

3. All legally available Non-Ad Valorem Revenues shall mean all revenues of the Town derived from any source whatsoever, other than Ad Valorem taxation on real and personal property, which are legally available to make the loan repayments required under this proposal, but only after provision has been made by the Town for payment of services and programs which are for essential public purpose affecting the health welfare and safety of the inhabitants of the Town or which are legally mandated by applicable law.
4. The average of the prior two years legally available Non Ad Valorem Revenues, as defined above, must cover existing and projected maximum annual debt service on debt secured by and/or payable from such Revenues by at least 1.5x.
5. For purposes of calculating maximum annual debt service or annual debt service, all variable rate borrowings secured by the Pledged Revenues shall be assumed to bear interest at the higher of 5% per annum or the actual interest rate borne by the variable rate debt for the month preceding the date of the calculation.
6. Legal opinions relating to this facility shall be in such form and content as are acceptable to the Bank and its counsel. All costs relating to the preparation of documents and to otherwise complete this transaction shall be paid for by the Town. Bank counsel fees shall not exceed \$4,500 to prepare or \$2,500 to review all legal documents associated with this transaction. Documents shall be available for review at least 5 business days prior to closing.
7. On an ongoing basis, the Town agrees that it shall deliver to the Bank, when available, or within 180 days of each fiscal year end, which ever is sooner, a Comprehensive Annual Financial Report, a Current Year Operating Budget and a Capital Improvement Plan, and an annual Covenant Compliance Certificate (in the form of Exhibit A attached) upon submission of their annual report.
8. This Commitment shall remain in full force and effect through 3:00 p.m., local time, December 31, 2001, at which time, if not accepted by execution of the acceptance clause below and mailed to the Bank at its 1950 West Hillsboro Blvd, Deerfield Beach, Florida 33442, office to my attention, this Commitment shall become null and void and is enforceable by neither the Bank nor the Town unless

extended by the Bank in writing. Unless extended by the Bank in writing, this facility must close on or prior to December 31, 2001 after which this commitment shall expire.

9. If the Bank chooses to waive any covenant, paragraph, or provision of this Commitment, or if any covenant, paragraph, or provision of this Commitment is construed by a court of competent jurisdiction to be invalid, it shall not affect the applicability, validity or enforceability of the remaining covenants, paragraphs or provisions.
10. The preceding terms and conditions are not exhaustive. Any final commitment may include other covenants, terms and closing conditions as are customarily required by the Bank for similar transactions including but not limited to a Cross Default with like secured debt, Default Rate, Events of Default, and Acceleration upon Default. This Commitment Letter shall not survive closing.
11. The Town represents and agrees that all information provided to the Bank is correct and complete. No material adverse change may occur in, nor may any adverse circumstance be discovered as to, the financial condition of the Town prior to closing. The Bank's obligations under this Commitment are conditioned on the fulfillment to the Bank's sole satisfaction of each term and condition referenced by this Commitment.
12. This Commitment supersedes all prior Commitments and proposals with respect to this transaction, whether written or oral, including any previous loan proposals made by the Bank or anyone acting within its authorization. No modification shall be valid unless in writing and signed by an authorized Officer of the Bank. This Commitment is not assignable and no entity other than the Town shall be entitled to rely on this Commitment.

First Union National Bank appreciates the opportunity to submit this Commitment to you and looks forward to your favorable response. Should you have any questions, please do not hesitate to contact me at (954) 596-6901.

Best Regards,

FIRST UNION NATIONAL BANK



Paul Vincent  
Vice-President

**ACCEPTANCE**

The above Commitment is hereby accepted on the terms and conditions outlined therein by authority of the Governing Board of the Town:

Closing Date: \_\_\_\_\_

Interest Rate Option: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_

Its:





December 6, 2001

Mr. Herb Hyman  
Procurement Manager  
Town of Davie  
6591 Orange Drive  
Davie, FL 33314

**Re: Bank Qualified Financing B-02-21**

Dear Mr. Hyman:

The following is the Kislak National Bank proposal for lease-purchase financing for the vehicles and equipment which the Town anticipates acquiring. This proposal applies to the 5-year and 7-year equipment described on page 1 of the Request for Proposal specifications. The equipment is more fully described as Communications Equipment (\$250,000 - 7 years), Computer Equipment (\$280,000 - 5 years), Fire Department Equipment (\$500,000 - 7 years), Police Department Digital Recording System (\$20,000 - 5 years), Imaging System (\$72,000 - 7 years), Public Works Tractor/Side mower (\$75,000 - 5 years) and Parks and Recreation Equipment (\$429,000 - 7 years).

**LESSOR:** Kislak National Bank, Miami Lakes, Florida

**LESSEE:** Town of Davie, FL

**AMOUNT TO BE FINANCED:** A) \$375,000; B) \$1,251,000

**ESTIMATED EQUIPMENT DELIVERY DATE:** To be determined (May have already occurred)

**ESTIMATED CLOSING DATE:** December 21, 2001

**EQUIPMENT FINANCING VEHICLE:** It is proposed that the parties utilize the Master Lease-Purchase Agreement ("Lease"). Under this arrangement, the Lessee would have the ability to obtain additional leased equipment under the same basic terms and conditions as originally agreed to without having to negotiate and execute a new contract. **Under this structure, there would be no covenant to budget and appropriate and no revenue pledge.**

**LEASE TERM:** A) Five (5) years; B) Seven (7) years; Subject to annual appropriation.

**LEASE COMMENCEMENT DATE:** The Lease Term will commence upon the funding of the Lease (payment to vendor) or the funding of the lease into a trust account.

**TRUST ACCOUNT:** The entire lease proceeds would be deposited by the Bank into a Trust Account prior to the delivery of the Equipment. A Trust Account, to be held by the Town, would be established. The Lease Term would commence on the date that the Trust Account is funded, with lease amortization commencing at that point. This alternative would allow the Town to lock in an interest rate up front when the Trust Account is funded. The account will be designated in the Lease to be used solely for payment of the Equipment/Project. Upon delivery of the equipment and/or completion of the construction project, the Town will provide the bank with an invoice(s), copy of the check issued for

December 6, 2001

payment and a certificate of acceptance. There are no bank fees for the Trust Account. This is an informal arrangement between the Town and the bank.

**TERMS OF LEASE:** The Lessee will make periodic lease payments sufficient to pay the debt service on the obligation during each year the Lease is in effect and not terminated by an event of non-appropriation. The obligation to make lease payments during any fiscal year will be limited to legally available revenues appropriated for such purpose by the Lessee. After the last scheduled payment, the Town will own the asset free and clear.

**INTEREST RATE:** A) 3.923% - bank qualified, 5-year rate  
B) 4.224% - bank qualified, 7-year rate

**ADJUSTMENT TO INTEREST RATE:** The Interest Rates will be fixed three (3) days prior to closing. The Interest Rate will be adjusted to the Federal Home Loan Bank of Atlanta (FHLB) 5-year PRC (PRC5) and 7-year PRC (PRC7) just prior to closing. The above interest rates will be adjusted by taking by 61.4% of the change in the index, which can be obtained at [www.fhlbatl.com](http://www.fhlbatl.com). Once the rate has been fixed, it will then remain fixed for the term of the financing. The FHLB rates used for the above interest rate calculation dated December 6, 2001 is 4.59% for the PRC5 and 5.08% for the PRC7.

After execution of the Lease, the Interest Rate may be adjusted in the event of a change in income tax rates or other laws or regulations affecting the after-tax yield to the Bank.

**PERIODIC RENTS:** Periodic Rents are to be made quarterly, semi-annually or annually in advance or in arrears at the discretion of the Town. Amortization schedules will be provided on request.

**TAX-EXEMPT STATEMENT:** The parties anticipate that the Agreement will qualify as a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Code.

**PREPAYMENT SCHEDULE:** Prepayment may be made at any time in accordance with the Federal Home Loan Bank yield maintenance provisions to be included in the documentation package.

**SALES AND USE TAX:** Lessee will pay all fees, assessments, sales, use, property, and other taxes imposed upon Lessor, resulting from the lease of the equipment.

**INSURANCE:** Prior to Lease Commencement Date, Lessee, at its sole cost and expense, will provide risk, physical damage and liability insurance with the Lessor named as "Loss Payee" and "additionally insured", in accordance with its normal standards, which may include self-insurance.

**TITLE TO EQUIPMENT:** Title shall at all times remain in the name of the Lessee.

**FINANCIAL STATEMENTS:** Lessee will furnish financial statements on an annual basis, as well as unaudited financial information and other supplementary information, which the Bank may request. Additionally, the Lessee will submit a copy of its annual budget within 45 days after the budget has been adopted.

**DOCUMENTATION:** To be provided by the Bank. As is customary, the Lessee's local counsel will be required to provide an opinion letter. The Town will also be required to provide a resolution approving the transaction and purchase.

**TRANSACTION EXPENSES:** Lessee shall be responsible for fees and expenses incurred by it. There will be no fees or expenses on behalf of the bank.

**MATERIAL ADVERSE CHANGE:** At any time prior to completion of funding, Lessor reserves the right to withdraw any approval in the event that Lessor determines that there has been a material adverse

December 6, 2001

change in the financial condition of the Lessee or in its ability or willingness to meet its obligations under this Proposal.

**EXPIRATION OF PROPOSAL:** This proposal expires unless accepted on or prior to January 30, 2002.

If the terms of the proposal are acceptable to the Town, please forward a copy of the 1998, 1999 and 2000 audit. The contents of this proposal represent the Bank's indication of the terms and conditions that it deems appropriate based upon the information available as of the date hereof. If the terms of this proposal are acceptable to you, please execute below and return the original to me.

Thank you again for the opportunity to be of service and to present this proposal for your consideration. Should you have any questions, please feel free to contact me at (407) 207-9192 or toll free at (877) 759-5253

Best Regards,



Denise Beauchamp  
Senior Vice President

Proposal accepted this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

***Town of Davie, FL***

By: \_\_\_\_\_

Title: \_\_\_\_\_

RESOLUTION NO. R 2001-\_\_\_\_\_

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE ISSUANCE OF PUBLIC IMPROVEMENT REVENUE BONDS OF THE TOWN OF DAVIE, FLORIDA, IN THE AGGREGATE PRINCIPAL AMOUNT OF \$10,000,000 FOR THE PURPOSE OF FINANCING OR REIMBURSING THE COST OF ACQUISITION, CONSTRUCTION AND EQUIPPING OF CERTAIN CAPITAL IMPROVEMENTS OF THE TOWN, AND PAYING COSTS OF ISSUANCE OF THE BONDS; AWARDING THE SALE OF THE BONDS TO FIRST UNION NATIONAL BANK; PROVIDING FOR SECURITY FOR THE BONDS; CONTAINING OTHER PROVISIONS RELATING TO THE BONDS; MAKING CERTAIN COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Town Council (the "Council") of the Town of Davie, Florida (the "Town") desires to authorize the issuance of public improvement revenue bonds in an aggregate principal amount of Ten Million Dollars (\$10,000,000) for the purpose of financing or reimbursing the cost of acquisition, construction and equipping of certain capital improvements of the Town, as specified in Exhibit "A" attached hereto (collectively, the "Project") and paying costs of issuance of the Bonds; and

**WHEREAS**, the Council hereby determines to accept a commitment (the "Commitment") from First Union National Bank (the "Bank") to purchase the Bonds;

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:**

**SECTION 1. AUTHORIZATION OF BONDS.** Pursuant to the provisions of this Resolution, revenue bonds of the Town to be designated "Town of Davie, Florida, Public Improvement Revenue Bonds, Series 2001" (the "Bonds"), are hereby authorized to be issued in an aggregate principal amount of Ten Million Dollars (\$10,000,000) for the purpose of financing or reimbursing the Town for costs of the Project and paying costs of issuance of the Bonds.

**SECTION 2. TERMS OF THE BONDS.** The Bonds shall be issued in fully registered form without coupons. The principal of and interest on the Bonds shall be payable when due in lawful money of the United States of America by wire transfer or by certified check delivered on or prior to the date due to the registered Owners of the Bonds ("Owners") or their legal representatives at the addresses of the Owners as they appear on the registration books of the Town.

The Bonds shall be dated the date of their issuance and delivery and shall be initially issued as one Bond in the denomination of \$10,000,000. The Bonds shall mature on October

1, 2016.

Subject to adjustment as provided below, the Bonds shall bear interest on the outstanding principal balance from their date of issuance payable semi-annually on each April 1 and October 1 (the "Interest Payment Dates"), commencing April 1, 2002, at an interest rate equal to sixty-six and one-half of one percent (66.5%) (the "Base Percentage") of the one-month LIBOR as shown on the Telerate System, page 3750, adjusted monthly on the first day of each month (the "LIBOR Rate"), plus 67.5 basis points (0.675%). The initial LIBOR Rate shall be based on the LIBOR Rate determined two (2) business days prior to the delivery date of the Bonds and each reset LIBOR Rate shall be based on the LIBOR Rate determined two (2) business days prior to the first day of each month.

Interest on the Bonds shall be computed on the basis of a 360-day year consisting of twelve (12) thirty-day months.

Adjustment of Interest Rate For Full Taxability. In the event a Determination of Taxability shall have occurred, the rate of interest on the Bonds shall be increased to a rate per annum equal to the LIBOR Rate plus 1.01% (the "Taxable Rate"), effective retroactively to the date on which the interest payable on the Bonds is includable for federal income tax purposes in the gross income of the Owners thereof. In addition, the Owners of the Bonds or any former Owners of the Bonds, as appropriate, shall be paid an amount equal to any additions to tax, interest and penalties, and any arrears in interest that are required to be paid to the United States by the Owners or former Owners of the Bonds as a result of such Determination of Taxability. All such additional interest, additions to tax, penalties and interest shall be paid by the Town on the next succeeding Interest Payment Date following the Determination of Taxability. A "Determination of Taxability" shall mean (i) the issuance by the Internal Revenue Service of a statutory notice of deficiency or other written notification which holds in effect that the interest payable on the Bonds is includable for federal income tax purposes in the gross income of the Owners thereof, which notice or notification is not contested by either the Town or any Owners of the Bonds, or (ii) a determination by a court of competent jurisdiction that the interest payable on the Bonds is includable for federal income tax purposes in the gross income of the Owners thereof, which determination either is final and non-appealable or is not appealed within the requisite time period for appeal, or (iii) the admission in writing by the Town to the effect that interest on Bonds is includable for federal income tax purposes in the gross income of the Owners thereof.

21

Adjustment of Interest Rate for Partial Taxability. In the event that interest on the Bonds during any period becomes partially taxable as a result of a Determination of Taxability applicable to less than all of the Bonds, then the interest rate on the Bonds shall be increased during such period by an amount equal to:  $(A-B) \times C$  where:

- (a) A equals the Taxable Rate (expressed as a percentage);
  - (b) B equals the interest rate on the Bonds (expressed as a percentage);
- and
- (c) C equals the portion of the Bonds the interest on which has become taxable as the result of such tax change (expressed as a decimal).

In addition, the Owners of the Bonds or any former Owners of the Bonds, as appropriate, shall be paid an amount equal to any additions to tax, interest and penalties, and any arrears in interest that are required to be paid to the United States by the Owners or former Owners of the Bonds as a result of such Determination of Taxability. All such additional interest, additions to tax, penalties and interest shall be paid by the Town on the next succeeding Interest Payment Date following the Determination of Taxability.

Adjustment of Interest Rate for Change in Maximum Corporate Tax Rate. In the event that the maximum effective federal corporate tax rate (the "Maximum Corporate Tax Rate") during any period with respect to which interest shall be accruing on the Bonds on a tax-exempt basis, shall be other than thirty-five percent (35%), the interest rate on the Bonds that are bearing interest on a tax-exempt basis shall be adjusted to the product obtained by multiplying the interest rate then in effect on the Bonds by a fraction equal to  $(1-A \div 1-B)$ , where A equals the Maximum Corporate Tax Rate in effect as of the date of adjustment and (B) equals Maximum Corporate Tax Rate in effect immediately prior to the date of adjustment.

Adjustment of Interest Rate for Other Changes Affecting After-Tax Yield. So long as any portion of the principal amount of the Bonds or interest thereon remains unpaid (a) if any law, rule, regulation or executive order is enacted or promulgated by any public body or governmental agency which changes the basis of taxation of interest on the Bonds or causes a reduction in yield on the Bonds (other than by reason of a change described above) to the Owners or any former Owners of the Bonds, including without limitation the imposition of any excise tax or surcharge thereon, or (b) if, as result of action by any public body or governmental agency, any payment is required to be made by, or any federal, state or local income tax deduction is denied to, the Owners or any former Owners of the Bonds (other than by reasons of change described above or by reason of any action or failure to act on the part of any Owner or any former Owner of the Bonds) by reason of the ownership of the Bonds, the Town shall reimburse any such Owner within five (5) days after receipt by the Town of written demand for such payment, and the Town agrees to indemnify each such Owner against any loss, cost, charge or expense with respect to any such change.

Adjustment of Interest Rate Upon an Event of Default. If an "event of default" occurs under Section 18 of this Resolution, the interest rate on the Bonds shall immediately be adjusted to a rate equal to the per annum interest rate announced by First Union National Bank, from time to time, as its "Prime Rate," plus two percent (2%).

The principal of the Bonds shall be payable in fifteen (15) annual installments of \$665,000 each (except that the last installment shall be in the amount of \$690,000) on each October 1, commencing October 1, 2002.

The Bonds are subject to prepayment in whole or in part at any time at a price of par plus accrued interest to the date of prepayment, upon written notice to the Owners thereof given by the Town at least five (5) days prior to the date fixed for prepayment.

Partial prepayments shall be applied in inverse order of the maturity of principal installments.

THE BONDS SHALL NOT BE DEEMED TO CONSTITUTE AN INDEBTEDNESS OF

THE TOWN OR A PLEDGE OF THE FAITH AND CREDIT OF THE TOWN, BUT SHALL BE PAYABLE EXCLUSIVELY FROM LEGALLY AVAILABLE NON-AD VALOREM REVENUES OF THE TOWN, AS DEFINED IN THIS RESOLUTION. THE ISSUANCE OF THE BONDS SHALL NOT DIRECTLY OR INDIRECTLY OR CONTINGENTLY OBLIGATE THE TOWN TO LEVY OR TO PLEDGE ANY FORM OF TAXATION WHATEVER THEREFOR NOR SHALL THE BONDS CONSTITUTE A CHARGE, LIEN, OR ENCUMBRANCE, LEGAL OR EQUITABLE, UPON ANY PROPERTY OF THE TOWN, AND THE HOLDERS OF THE BONDS SHALL HAVE NO RECOURSE TO THE POWER OF TAXATION.

**SECTION 3. EXECUTION OF BONDS.** The Bonds shall be signed in the name of the Town by the Mayor, the Vice Mayor or any member of the Council, and the Town Clerk or the Assistant Town Clerk, and its seal shall be affixed thereto or imprinted or reproduced thereon. The signatures of the Mayor, Vice Mayor, any member of the Council, the Town Clerk and the Assistant Town Clerk on the Bonds may be manual or facsimile signatures, provided that the signature of one of such officers shall be a manual signature. In case any one or more of the officers who shall have signed or sealed any of the Bonds shall cease to be such officer of the Town before the Bonds so signed and sealed shall have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed and sealed such Bonds had not ceased to hold such office. Any Bonds may be signed and sealed on behalf of the Town by such person as at the actual time of the execution of such Bonds shall hold the proper office, although at the date of issuance of such Bonds such person may not have held such office or may not have been so authorized.

**SECTION 4. NEGOTIABILITY, REGISTRATION AND CANCELLATION.** The Town shall serve as Registrar and as such shall keep books for the registration of Bonds and for the registration of transfers of Bonds. Bonds may be transferred or exchanged upon the registration books kept by the Town, upon delivery to the Town, together with written instructions as to the details of the transfer or exchange, of such Bonds in form satisfactory to the Town and with guaranty of signatures satisfactory to the Town, along with the social security number or federal employer identification number of any transferee and, if the transferee is a trust, the name and social security or federal tax identification numbers of the settlor and beneficiaries of the trust, the date of the trust and the name of the trustee. Bonds may be exchanged for one or more Bonds of the same aggregate principal amount and maturity and in denominations in integral multiples of \$250,000 (except that an odd lot is permitted to complete the outstanding principal balance). No transfer or exchange of any Bond shall be effective until entered on the registration books maintained by the Town.

The Town may deem and treat the person in whose name any Bond shall be registered upon the books kept by the Town as the absolute Owner of such Bond, whether such Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal of and interest on such Bond as they become due and for all other purposes. All such payments so made to any such Owner or upon his order shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

In all cases in which Bonds are transferred or exchanged in accordance with this Section, the Town shall execute and deliver Bonds in accordance with the provisions of this Resolution. All Bonds surrendered in any such exchanges or transfers shall forthwith be canceled by the Town. There shall be no charge for any such exchange or transfer of Bonds,

but the Town may require the payment of a sum sufficient to pay any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer. The Town shall not be required to transfer or exchange Bonds for a period of fifteen (15) days next preceding an interest payment date on such Bonds.

All Bonds, the principal and interest of which has been paid, either at or prior to maturity, shall be delivered to the Town when such payment is made, and shall thereupon be canceled.

In case part but not all of an outstanding Bond shall be prepaid, such Bond shall not be surrendered in exchange for a new Bond, but the Town shall make a notation indicating the remaining outstanding principal of the Bonds upon the registration books. The Bond so redesignated shall have the remaining principal as provided on such registration books and shall be deemed to have been issued in the denomination of the outstanding principal balance, which shall be an authorized denomination.

SECTION 5. BONDS MUTILATED, DESTROYED, STOLEN OR LOST. In case any Bond shall become mutilated or be destroyed, stolen or lost, the Town may in its discretion issue and deliver a new Bond of like tenor as the Bond so mutilated, destroyed, stolen or lost, in the case of a mutilated Bond, in exchange and substitution for such mutilated Bond upon surrender of such mutilated Bond or in the case of a destroyed, stolen or lost Bond in lieu of and substitution for the Bond destroyed, stolen or lost, upon the Owner furnishing the Town proof of his ownership thereof, satisfactory proof of loss or destruction thereof and satisfactory indemnity, complying with such other reasonable regulations and conditions as the Town may prescribe and paying such expenses as the Town may incur. The Town shall cancel all mutilated Bonds that are surrendered. If any mutilated, destroyed, lost or stolen Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the Town may pay the principal of and interest on such Bond upon the Owner complying with the requirements of this paragraph.

Any such duplicate Bonds issued pursuant to this section shall constitute original, additional contractual obligations of the Town whether or not the lost, stolen or destroyed Bonds be at any time found by anyone, and such duplicate Bonds shall be entitled to equal and proportionate benefits and rights as to lien on and source and security for payment from the funds, as hereinafter pledged, to the extent as all other Bonds issued hereunder.

SECTION 6. FORM OF BONDS. The text of the Bonds shall be of substantially the following tenor, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted by this Resolution.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]



No. R-

\$10,000,000

UNITED STATES OF AMERICA

STATE OF FLORIDA

TOWN OF DAVIE

PUBLIC IMPROVEMENT REVENUE BOND  
SERIES 2001

Registered Owner:

Principal Amount:        Dollars

KNOW ALL MEN BY THESE PRESENTS, that the Town of Davie, Florida (the "Town"), for value received, hereby promises to pay in installments to the Registered Owner shown above, or registered assigns, on the dates set forth below, the Principal Amount specified above. Subject to the rights of prior prepayment and amortization described in this Bond, this Bond shall mature on October 1, 2016.

This Bond is issued under authority of and is full compliance with the Constitution and laws of the State of Florida, including particularly Part II of Chapter 166, Florida Statutes, as amended, the Charter of the Town and Resolution No. R-2001-\_\_\_\_\_ duly adopted by the Town Council of the Town on December 19, 2001 (the "Bond Resolution"), and is subject to the terms of the Bond Resolution. This Bond is issued for the purpose of financing or reimbursing the costs of certain capital improvements of the Town specified in the Bond Resolution, and paying costs of issuance of the Bonds.

Subject to adjustment as provided below, this Bond shall bear interest on the outstanding principal balance from its date of issuance payable semi-annually on each April 1 and October 1 (the "Interest Payment Dates"), commencing April 1, 2002, at an interest rate equal to sixty-six and one-half of one percent (66.5%) (the "Base Percentage") of the one-month LIBOR as shown on the Telerate System, page 3750, adjusted monthly on the first day of each month (the "LIBOR Rate"), plus 67.5 basis points (0.675%). The initial LIBOR Rate shall be based on the LIBOR Rate determined two (2) business days prior to the delivery date of the Bonds and each reset LIBOR Rate shall be based on the LIBOR Rate determined two (2) business days prior to the first day of each month.

Interest on this Bond shall be computed on the basis of a 360-day year consisting of twelve (12) thirty-day months.

Adjustment of Interest Rate For Full Taxability. In the event a Determination of Taxability shall have occurred, the rate of interest on the Bonds shall be increased to a rate per annum equal to the LIBOR Rate plus 1.01% (the "Taxable Rate"), effective retroactively to the date on which the interest payable on the Bonds is includable for federal income tax purposes in the gross income of the Owners thereof. In addition, the Owners of the Bonds or any former Owners of the Bonds, as appropriate, shall be paid an amount equal to any

additions to tax, interest and penalties, and any arrears in interest that are required to be paid to the United States by the Owners or former Owners of the Bonds as a result of such Determination of Taxability. All such additional interest, additions to tax, penalties and interest shall be paid by the Town on the next succeeding Interest Payment Date following the Determination of Taxability. A "Determination of Taxability" shall mean (i) the issuance by the Internal Revenue Service of a statutory notice of deficiency or other written notification which holds in effect that the interest payable on the Bonds is includable for federal income tax purposes in the gross income of the Owners thereof, which notice or notification is not contested by either the Town or any Owners of the Bonds, or (ii) a determination by a court of competent jurisdiction that the interest payable on the Bonds is includable for federal income tax purposes in the gross income of the Owners thereof, which determination either is final and non-appealable or is not appealed within the requisite time period for appeal, or (iii) the admission in writing by the Town to the effect that interest on Bonds is includable for federal income tax purposes in the gross income of the Owners thereof.

Adjustment of Interest Rate for Partial Taxability. In the event that interest on the Bonds during any period becomes partially taxable as a result of a Determination of Taxability applicable to less than all of the Bonds, then the interest rate on the Bonds shall be increased during such period by an amount equal to:  $(A-B) \times C$  where:

- (a) A equals the Taxable Rate (expressed as a percentage);
  - (b) B equals the interest rate on the Bonds (expressed as a percentage);
- and
- (c) C equals the portion of the Bonds the interest on which has become taxable as the result of such tax change (expressed as a decimal).

In addition, the Owners of the Bonds or any former Owners of the Bonds, as appropriate, shall be paid an amount equal to any additions to tax, interest and penalties, and any arrears in interest that are required to be paid to the United States by the Owners or former Owners of the Bonds as a result of such Determination of Taxability. All such additional interest, additions to tax, penalties and interest shall be paid by the Town on the next succeeding Interest Payment Date following the Determination of Taxability.

Adjustment of Interest Rate for Change in Maximum Corporate Tax Rate. In the event that the maximum effective federal corporate tax rate (the "Maximum Corporate Tax Rate") during any period with respect to which interest shall be accruing on the Bonds on a tax-exempt basis, shall be other than thirty-five percent (35%), the interest rate on the Bonds that are bearing interest on a tax-exempt basis shall be adjusted to the product obtained by multiplying the interest rate then in effect on the Bonds by a fraction equal to  $(1-A \text{ divided by } 1-B)$ , where A equals the Maximum Corporate Tax Rate in effect as of the date of adjustment and (B) equals Maximum Corporate Tax Rate in effect immediately prior to the date of adjustment.

Adjustment of Interest Rate for Other Changes Affecting After-Tax Yield. So long as any portion of the principal amount of the Bonds or interest thereon remains unpaid (a) if any law, rule, regulation or executive order is enacted or promulgated by any public body or

governmental agency which changes the basis of taxation of interest on the Bonds or causes a reduction in yield on the Bonds (other than by reason of a change described above) to the Owners or any former Owners of the Bonds, including without limitation the imposition of any excise tax or surcharge thereon, or (b) if, as result of action by any public body or governmental agency, any payment is required to be made by, or any federal, state or local income tax deduction is denied to, the Owners or any former Owners of the Bonds (other than by reasons of change described above or by reason of any action or failure to act on the part of any Owner or any former Owner of the Bonds) by reason of the ownership of the Bonds, the Town shall reimburse any such Owner within five (5) days after receipt by the Town of written demand for such payment, and the Town agrees to indemnify each such Owner against any loss, cost, charge or expense with respect to any such change.

Adjustment of Interest Rate Upon an Event of Default. If an "event of default" occurs under Section 18 of the Bond Resolution, the interest rate on the Bonds shall immediately be adjusted to a rate equal to the per annum interest rate announced by First Union National Bank, from time to time, as its "Prime Rate," plus two percent (2%).

The principal of this Bond shall be payable in fifteen (15) annual installments of \$665,000 each (except that the last installment shall be in the amount of \$690,000) on each October 1, commencing October 1, 2002.

The principal of and interest on this Bond are payable in lawful money of the United States of America by wire transfer or by certified check delivered on or prior to the date due to the registered Owner or his legal representative at the address of the Owner as it appears on the registration books of the Town.

The Town has covenanted and agreed in the Bond Resolution to appropriate in its annual budget, by amendment, if necessary, from Non-Ad Valorem Revenues lawfully available in each fiscal year, amounts sufficient to pay the principal and interest due on the Bonds in accordance with their terms during such fiscal year. "Non-Ad Valorem Revenues" means all revenues of the Town derived from any source other than ad valorem taxation on real or personal property which are legally available to make the payments required under the Bond Resolution; but only after provision has been made by the Town for the payment of all essential or legally mandated services. Such covenant and agreement on the part of the Town to budget and appropriate such amounts of Non-Ad Valorem Revenues shall be cumulative to the extent not paid, and shall continue until such Non-Ad Valorem Revenues or other legally available funds in amounts sufficient to make all such required payments shall have been budgeted, appropriated and actually paid. Notwithstanding the foregoing covenant of the Town, the Town does not covenant to maintain any services or programs, now provided or maintained by the Town, which generate Non-Ad Valorem Revenues.

Such covenant to budget and appropriate does not create any lien upon or pledge of such Non-Ad Valorem Revenues, nor does it preclude the Town from pledging in the future its Non-Ad Valorem Revenues, nor does it require the Town to levy and collect any particular Non-Ad Valorem Revenues, nor does it give the Bondholders a prior claim on the Non-Ad Valorem Revenues as opposed to claims of general creditors of the Town. Such covenant to appropriate Non-Ad Valorem Revenues is subject in all respects to the payment of obligations secured by a pledge of such Non-Ad Valorem Revenues heretofore or hereinafter entered into (including the payment of debt service on bonds and other debt instruments).

However, the covenant to budget and appropriate in its general annual budget for the purposes and in the manner stated in the Bond Resolution shall have the effect of making available in the manner described herein Non-Ad Valorem Revenues and placing on the Town a positive duty to appropriate and budget, by amendment, if necessary, amounts sufficient to meet its obligations under the Bond Resolution, subject, however, in all respects to the terms of the Bond Resolution and the restrictions of Section 166.241(3), Florida Statutes, which provides, in part, that the governing body of each municipality make appropriations for each fiscal year which, in any one year, shall not exceed the amount to be received from taxation or other revenue sources; and subject, further, to the payment of services and programs which are for essential public purposes affecting the health, welfare and safety of the inhabitants of the Town or which are legally mandated by applicable law.

THIS BOND SHALL NOT BE DEEMED TO CONSTITUTE AN INDEBTEDNESS OF THE TOWN OR A PLEDGE OF THE FAITH AND CREDIT OF THE TOWN, BUT SHALL BE PAYABLE EXCLUSIVELY FROM LEGALLY AVAILABLE NON-AD VALOREM REVENUES OF THE TOWN. THE ISSUANCE OF THIS BOND SHALL NOT DIRECTLY OR INDIRECTLY OR CONTINGENTLY OBLIGATE THE TOWN TO LEVY OR TO PLEDGE ANY FORM OF TAXATION WHATEVER THEREFOR NOR SHALL THIS BOND CONSTITUTE A CHARGE, LIEN, OR ENCUMBRANCE, LEGAL OR EQUITABLE, UPON ANY PROPERTY OF THE TOWN, AND THE HOLDER OF THIS BOND SHALL HAVE NO RECOURSE TO THE POWER OF TAXATION.

This Bond is subject to prepayment in whole or in part at any time at a price of par plus accrued interest to the date of prepayment, upon written notice to the registered Owner hereof given by the Town at least five (5) days prior to the date fixed for prepayment.

Partial prepayments shall be applied in inverse order of the maturity of principal installments.

The original registered Owner, and each successive registered Owner of this Bond shall be conclusively deemed to have agreed and consented to the following terms and conditions:

1. The Town shall keep books for the registration of Bonds and for the registration of transfers of Bonds as provided in the Resolution. Bonds may be transferred or exchanged upon the registration books kept by the Town, upon delivery to the Town, together with written instructions as to the details of the transfer or exchange, of such Bonds in form satisfactory to the Town and with guaranty of signatures satisfactory to the Town, along with the social security number or federal employer identification number of any transferee and, if the transferee is a trust, the name and social security or federal tax identification numbers of the settlor and beneficiaries of the trust, the date of the trust and the name of the trustee. The Bonds may be exchanged for Bonds of the same principal amount and maturity and denominations in integral multiples of \$250,000 (except that an odd lot is permitted to complete the outstanding principal balance). No transfer or exchange of any Bond shall be effective until entered on the registration books maintained by the Town.

2. The Town may deem and treat the person in whose name any Bond shall be registered upon the books of the Town as the absolute Owner of such Bond,

whether such Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal of and interest on such Bond as they become due, and for all other purposes. All such payments so made to any such Owner or upon his order shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

3. In all cases in which the privilege of exchanging Bonds or transferring Bonds is exercised, the Town shall execute and deliver bonds in accordance with the provisions of the Resolution. There shall be no charge for any such exchange or transfer of Bonds, but the Town may require payment of a sum sufficient to pay any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer. The Town shall not be required to transfer or exchange Bonds for a period of fifteen (15) days next preceding an interest payment date on such Bonds.

4. All Bonds, the principal of which has been paid, either at or prior to maturity, shall be delivered to the Town when such payment is made, and shall thereupon be canceled. In case part, but not all of an outstanding Bond shall be prepaid, such Bond shall not be surrendered in exchange for a new Bond.

It is hereby certified and recited that all acts, conditions and things required to happen, to exist and to be performed precedent to and for the issuance of this Bond have happened, do exist and have been performed in due time, form and manner as required by the Constitution and the laws of the State of Florida applicable thereto.

**IN WITNESS WHEREOF**, the Town of Davie, Florida has caused this Bond to be executed by the manual or facsimile signature of its Mayor and of its Town Clerk, and the Seal of the Town of Davie, Florida or a facsimile thereof to be affixed hereto or imprinted or reproduced hereon, all as of the \_\_\_\_ day of December, 2001.

TOWN OF DAVIE, FLORIDA

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Town Clerk

(SEAL)

## ASSIGNMENT

FOR VALUE RECEIVED, the undersigned \_\_\_\_\_ (the "Transferor"), hereby sells, assigns and transfers unto \_\_\_\_\_ (Please insert name and Social Security or Federal Employer identification number of assignee) the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ (the "Transferee") as attorney to register the transfer of the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Date \_\_\_\_\_

Signature Guaranteed:

\_\_\_\_\_ Social Security Number of Assignee

\_\_\_\_\_  
NOTICE: Signature(s) must be guaranteed by a member firm of the New York Stock Exchange or a commercial bank or a trust company

NOTICE: No transfer will be registered and no new Bond will be issued in the name of the Transferee, unless the signature(s) to this assignment corresponds with the name as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever and the Social Security or Federal Employer Identification Number of the Transferee is supplied.

The following abbreviations, when used in the inscription on the face of the within Bond, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM - as tenants in common

UNIF      GIF      MIN      ACT      -

\_\_\_\_\_,

(Cust.)

Custodian for \_\_\_\_\_

(Minor)

TEN ENT - as tenants by  
the entirety

under Uniform Gifts to Minors

Act of \_\_\_\_\_

(State)

JT TEN - as joint tenants with right of  
survivorship and not as tenants  
in common

Additional abbreviations may also be used though not in the list above.

**SECTION 7. COVENANT TO BUDGET AND APPROPRIATE.** The Town hereby covenants and agrees to appropriate in its annual budget, by amendment, if necessary, from Non-Ad Valorem Revenues lawfully available in each fiscal year, amounts sufficient to pay the principal and interest due on the Bonds in accordance with their terms during such fiscal year and to make any payments under any Swap Agreement (defined in Section 9 hereof) in each fiscal year as required hereunder. "Non-Ad Valorem Revenues" means all revenues of the Town derived from any source other than ad valorem taxation on real or personal property and which are legally available to make the payments required under this Resolution; but only after provision has been made by the Town for the payment of all essential or legally mandated services. Such covenant and agreement on the part of the Town to budget and appropriate such amounts of Non-Ad Valorem Revenues shall be cumulative to the extent not paid, and shall continue until such Non-Ad Valorem Revenues or other legally available funds in amounts sufficient to make all such required payments shall have been budgeted, appropriated and actually paid. Notwithstanding the foregoing covenant of the Town, the Town does not covenant to maintain any services or programs, now provided or maintained by the Town, which generate Non-Ad Valorem Revenues.

Such covenant to budget and appropriate does not create any lien upon or pledge of such Non-Ad Valorem Revenues, nor does it preclude the Town from pledging in the future its Non-Ad Valorem Revenues, nor does it require the Town to levy and collect any particular Non-Ad Valorem Revenues, nor does it give the Bondholders a prior claim on the Non-Ad Valorem Revenues as opposed to claims of general creditors of the Town. Such covenant to appropriate Non-Ad Valorem Revenues is subject in all respects to the payment of obligations secured by a pledge of such Non-Ad Valorem Revenues heretofore or hereinafter entered into (including the payment of debt service on bonds and other debt instruments). However, the covenant to budget and appropriate in its general annual budget for the purposes and in the manner stated herein shall have the effect of making available in the manner described herein Non-Ad Valorem Revenues and placing on the Town a positive duty to appropriate and budget, by amendment, if necessary, amounts sufficient to meet its obligations under this Resolution, subject, however, in all respects to the terms of this Resolution and the restrictions of Section 166.241(3), Florida Statutes, which provides, in part, that the governing body of each municipality make appropriations for each fiscal year which, in any one year, shall not exceed the amount to be received from taxation or other revenue sources; and subject, further, to the payment of services and programs which are for essential public purposes affecting the health, welfare and safety of the inhabitants of the Town or which are legally mandated by applicable law.

**SECTION 8. BOND FUND.** There is hereby created a fund, entitled "Town of Davie, Florida Public Improvement Revenue Bonds, Series 2001 Bond Fund" (the "Bond Fund"). There shall be deposited into the Bond Fund on each Interest Payment Date sufficient amounts of Non-Ad Valorem Revenues as specified in Section 7 hereof which, together with the amounts already on deposit therein, will enable the Town to pay the principal of and interest on the Bonds on each Interest Payment Date. Moneys in the Bond Fund shall be applied on each Interest Payment Date to the payment of principal of and interest on the Bonds coming due on each such date.



**SECTION 9. SWAP AGREEMENTS.** The Town is authorized to enter into a Swap Agreement with the Bondholders or with another party with the consent of the Bondholders for the purpose of effectively lowering or fixing the interest rate on the Bonds for any period of time. For purposes of depositing sufficient moneys into the Bond Fund to pay principal and interest on the Bonds pursuant to Section 8 hereof, and for purpose of the calculation specified in Section 16(b) hereof, (i) any payments due under the Swap Agreement shall be considered to be the equivalent of debt service payments on the Bonds, and sufficient amounts of legally available Non-Ad Valorem Revenues shall be budgeted and appropriated in each fiscal year to make such payments, and (ii) any payments received or to be received by the Town under the Swap Agreement may be taken into account and, upon receipt, shall be deposited into the Bond Fund.

**SECTION 10. INVESTMENT OF BOND FUND.** Subject to Section 13 hereof, funds in the Bond Fund may be invested in the following investments, maturing at or before the time such funds may be needed to pay principal of or interest on Bonds, to the extent such investments are legal for investment of municipal funds ("Authorized Investments"):

- (a) The Local Government Surplus Funds Trust Fund;
- (b) Negotiable direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States Government at the then prevailing market price for such securities;
- (c) Interest-bearing time deposits or savings accounts in banks organized under the laws of the State of Florida (the "State"), in national banks organized under the laws of the United States and doing business and situated in the State, in savings and loan associations which are under State supervision, or in federal savings and loan associations located in the State and organized under federal law and federal supervision, provided that any such deposits are secured by collateral as may be prescribed by law;
- (d) Obligations of the federal farm credit banks; the Federal Home Loan Mortgage Corporation, including Federal Home Loan Mortgage Corporation participation certificates; or the Federal Home Loan Bank or its district banks or obligations guaranteed by the Government National Mortgage Association;
- (e) Obligations of the Federal National Mortgage Association, including Federal National Mortgage Association participation certificates and mortgage pass-through certificates guaranteed by the Federal National Mortgage Association;
- (f) Securities of, or other interests in, any open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940, 15 U.S.C. ss. 80a-1 et seq., as amended from time to time, provided the portfolio of such investment company or investment trust is limited to United States Government obligations and to repurchase agreements fully collateralized by such United States Government obligations and provided such investment company or investment trust takes delivery of such collateral either directly or through an authorized custodian; or

(g) Any other investments that at the time are legal investments for municipal funds.

**SECTION 11. APPLICATION OF BOND PROCEEDS.** The proceeds received upon the sale of the Bonds shall be applied simultaneously with the delivery of the Bonds, as follows:

1. The Town shall first use the moneys to pay costs of the issuance of the Bonds.
2. The remainder of the proceeds of the sale of the Bonds shall be deposited in the "Town of Davie Public Improvement Revenue Bonds, Series 2001 Project Fund" (the "Project Fund"), hereby created, and used only in connection with the Project or to pay capitalized interest on the Bonds.

Pending their use, the proceeds in the Project Fund may be invested in Authorized Investments, maturing not later than the date or dates on which such proceeds will be needed for the purposes of this Bond Resolution. Subject to Section 13 hereof, any income received upon such investment shall be deposited in the Project Fund and applied to costs of the Project or, at the option of the Town, deposited in the Bond Fund and used to pay interest on the Bonds until completion of the Project. Subject to Section 13 hereof, after the completion of the Project, any remaining balance of proceeds of the Bonds shall be deposited into the Bond Fund and used solely to pay principal of the Bonds.

Such funds shall be kept separate and apart from all other funds of the Town and the moneys on deposit therein shall be withdrawn, used and applied by the Town solely for the purposes set forth herein. Pending such application, the Project Fund shall be subject to the lien of the Owners of the Bonds for the payment of the principal of and interest on the Bonds.

The registered Owners shall have no responsibility for the use of the proceeds of the Bonds, and the use of such Bond proceeds by the Town shall in no way affect the rights of such registered Owners. The Town shall be irrevocably obligated to pay the principal of and interest on the Bonds notwithstanding any failure of the Town to use and apply such Bond proceeds in the manner provided herein.

**SECTION 12. FUNDS.** Each of the funds and accounts herein established and created shall constitute trust funds for the purposes provided herein for such funds and accounts respectively. The money in such funds and accounts shall be continuously secured in the same manner as deposits of Town funds are authorized to be secured by the laws of the State of Florida. Except as otherwise provided in Section 11 hereof, earnings on any investments in any amounts on any of the funds and accounts herein established and created shall be credited to such respective fund or account.

The designation and establishment of the funds and accounts in and by this Bond Resolution shall not be construed to require the establishment of any completely independent, self-balancing funds, as such term is commonly defined and used in governmental accounting, but rather is intended solely to constitute an earmarking of certain tax revenues and assets of the Town for the purposes herein provided and to establish certain priorities for application of such tax revenues and assets.

SECTION 13. INVESTMENTS AND USE OF PROCEEDS TO COMPLY WITH INTERNAL REVENUE CODE OF 1986. The Town covenants to the Owners of the Bonds that it will take all actions and do all things necessary and desirable in order to maintain the exclusion from gross income for federal income tax purposes of interest on the Bonds, and shall refrain from taking any actions that would cause interest on the Bonds to be included in gross income for federal income tax purposes. In particular, the Town will not make or direct the making of any investment or other use of the proceeds of the Bonds which would cause such Bonds to be "private activity bonds" as that term is defined in Section 141 (or any successor provision thereto) of the Code or "arbitrage bonds" as that term is defined in Section 148 (or any successor provision thereto) of the Code, and all applicable regulations promulgated under the Code, and that it will comply with the applicable requirements of Sections 141 and 148 of the Code and the aforementioned regulations throughout the term of the Bonds.

SECTION 14. DESIGNATION UNDER SECTION 265(b)(3) OF THE CODE. The Town hereby designates the Bonds as qualified tax-exempt obligations under Section 265(b)(3) of the Code, and shall make all necessary filings in order to effectuate such election. The Town represents that neither the Town nor any subordinate entities or entities issuing tax-exempt obligations on behalf of the Town within the meaning of Section 265(b)(3) of the Code have issued tax-exempt obligations during calendar year 2001 and neither the Town nor any such entities expect to issue tax-exempt obligations during calendar year 2001, other than the Bonds.

SECTION 15. ARBITRAGE REBATE COVENANTS. There is hereby created and established a fund to be held by the Town, designated the "Town of Davie Public Improvement Revenue Bonds, Series 2001 Rebate Fund" (the "Rebate Fund"). The Rebate Fund shall be held by the Town separate and apart from all other funds and accounts held by the Town under this Resolution and from all other moneys of the Town.

Notwithstanding anything in this Resolution to the contrary, the Town shall transfer to the Rebate Fund the amounts required to be transferred in order to comply with the Tax Certificate or the Rebate Covenants, if any, attached as an Exhibit to the Tax Certificate to be delivered by the Town on the date of delivery of the Bonds (the "Rebate Covenants"), when such amounts are so required to be transferred. The Town Administrator shall make or cause to be made payments from the Rebate Fund of amounts required to be deposited therein to the United States of America in the amounts and at the times required by the Rebate Covenants. The Town covenants for the benefit of the Owners of the Bonds that it will comply with the Rebate Covenants. The Rebate Fund, together with all moneys and securities from time to time held therein and all investment earnings derived therefrom, shall be excluded from the pledge and lien of this Resolution. The Town shall not be required to comply with the requirements of this Section 15 in the event that the Town obtains an opinion of nationally recognized bond counsel that (i) such compliance is not required in order to maintain the federal income tax exemption of interest on the Bonds and/or (ii) compliance with some other requirement is necessary to maintain the federal income tax exemption of interest on the Bonds.

SECTION 16. SPECIAL COVENANTS OF THE TOWN.

(a) The Town shall, upon receipt by the Town or within one hundred eighty (180) days of each fiscal year end, whichever is sooner, provide the Owners of the Bonds with a copy of its Comprehensive Annual Financial Report, its current year operating budget and its capital improvement plan, and a certificate of its Finance Director in form and substance satisfactory to the Owners of the Bonds evidencing compliance with the covenant set forth in Section 16(b) below. The Town shall also provide to the Owners of the Bonds any other financial information reasonably requested by such Owners.

(b) The Town covenants and agrees that it will at all times maintain a coverage ratio such that the average of Non-Ad Valorem Revenues of the Town during the prior two fiscal years is equal to at least 150% of Maximum Annual Debt Service. For purposes of this paragraph,

(i) "Maximum Annual Debt Service" shall mean the maximum amount of principal and interest required in the then current or any future fiscal year to pay all Debt Obligations;

(ii) "Debt Obligations" shall mean debt service on debt obligations of the Town, including the Bonds, which are secured by or payable from Non-Ad Valorem Revenues.

Calculations of Non-Ad Valorem Revenues will be based on information derived from the most recently audited fiscal year end financial statements. For purposes of calculating Maximum Annual Debt Service, the interest rate to be assumed for indebtedness bearing interest at a variable rate shall be equal to the average rate of interest paid by the Town with respect to such indebtedness during the twelve (12) months preceding the date of calculation.

SECTION 17. COVENANTS BINDING ON TOWN AND SUCCESSOR. All covenants, stipulations, obligations and agreements of the Town contained in this Resolution shall be deemed to be covenants, stipulations, obligations and agreements of the Town to the full extent authorized or permitted by law, and all such covenants, stipulations, obligations and agreements shall be binding upon the successor or successors thereof from time to time and upon the officer, board, body or commission to whom or to which any power or duty affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law.

Except as otherwise provided in this Resolution, all rights, powers and privileges conferred and duties and liabilities imposed upon the Town or upon the Town Council by the provisions of this Resolution shall be exercised or performed by the Town Council or by such officers, board, body or commission as may be required by law to exercise such powers or to perform such duties.

No covenant, stipulation, obligation or agreement herein contained shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future member of the Town Council or officer, agent or employee of the Town in his or her individual capacity, and neither the members of the Town Council nor any officer, agent or employee of the Town executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

SECTION 18. EVENTS OF DEFAULT. Each of the following events is hereby declared an "event of default":

(a) payment of the principal of any of the Bonds shall not be made when the same shall become due and payable; or

(b) payment of any installment of interest on any of the Bonds shall not be made when the same shall become due and payable; or

(c) the Town shall default in the due and punctual performance of any covenant, condition, agreement or provision contained in the Bonds or in this Resolution (except for a default described in subsection (a) or (b) of this Section) on the part of the Town to be performed, and such default shall continue for sixty (60) days after written notice specifying such default and requiring same to be remedied shall have been given to the Town by any Owner of any bond; provided that it shall not constitute an event of default if the default is not one that can be cured within such sixty (60) days, as agreed by the Bondholders and the Town, and the Town commences within such sixty (60) days and is proceeding diligently with action to correct such default;

(d) any proceeding shall be instituted with the consent of the Town for the purpose of effecting a composition between the Town and its creditors or for the purpose of adjusting the claims of such creditors pursuant to any federal or state statute now or hereafter enacted and such proceedings shall not have been dismissed within thirty (30) days after the institution of the same; or

(e) a payment default under any other debt obligation of the Town which results in an acceleration of such debt.

SECTION 19. REMEDIES; RIGHTS OF BONDHOLDERS.

(a) Upon the occurrence and continuance of any event of default specified in Section 18(e) hereof, the Owners of the Bonds may declare all payments of principal and accrued interest to be immediately due and payable, whereupon the same shall become immediately due and payable.

(b) Upon the occurrence and continuance of any event of default specified in Section 18(a), (b), (c) or (d) hereof, the Owners of the Bonds may pursue any available remedy by suit, at law or in equity, to enforce the payment of the principal of and interest on the Bonds then outstanding.

No delay or omission to exercise any right or power accruing upon any default or event of default shall impair any such right or power or shall be construed to be a waiver of any such default or event of default or acquiescence therein; and every such right and power may be exercised from time to time and as often as may be deemed expedient. No waiver of any event of default hereunder shall extend to or shall affect any subsequent event of default or shall impair any rights or remedies consequent thereon.

The Town agrees, to the extent permitted by law, to indemnify the Bank and its directors, officers, employees and agents from any against any losses, claims, damages, liabilities and expenses (including, without limitation, counsel fees and expenses) which may be incurred in connection with enforcement of the provisions of this Resolution and the Bonds.

SECTION 20. DEFEASANCE. Upon the payment in full of all principal and interest due on the Bonds, the Bonds shall be deemed to be paid and shall no longer be deemed to be outstanding for the purposes of this Resolution and all covenants and pledges hereunder, and all liability of the Town with respect to said Bonds, shall cease, terminate and be completely discharged and extinguished; provided, however, that the requirements of Section 15 hereof to rebate any amounts due to the United States pursuant to the Rebate Covenants shall survive the payment of principal and interest with respect to the Bonds or any portion thereof.

SECTION 21. SALE OF BONDS. Based upon the uncertainty of the interest rate environment if sale of the Bonds is delayed, the Town hereby determines and finds the necessity for a negotiated sale of the Bonds. The Town has been provided all applicable disclosure information required by Section 218.385, Florida Statutes. The negotiated sale of the Bonds is hereby approved to the Bank at a purchase price of par.

SECTION 22. AUTHORITY OF OFFICERS. The Mayor, the Vice Mayor, any member of the Council, the Town Administrator, the Town Clerk, the Assistant Town Clerk, the Director of the Department of Budget and Finance and any other proper official of the Town, are and each of them is hereby authorized and directed to execute and deliver any and all documents and instruments and to do and cause to be done any and all acts and things necessary or proper for carrying out the transaction contemplated by this Resolution and the other documents identified herein.

SECTION 23. SEVERABILITY. In case any one or more of the provisions of this Resolution or of any Bonds issued hereunder shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Resolution or of

the Bonds, but this Resolution and the Bonds shall be construed and enforced as if such illegal or invalid provision had not been contained therein. The Bonds are issued and this Resolution is adopted with the intent that the laws of the State shall govern their construction.

SECTION 24. PAYMENTS DUE ON SATURDAYS, SUNDAYS AND HOLIDAYS. In any case where the date of maturity of interest on or principal of the Bonds shall be a Saturday, Sunday or a day on which the banks in the State are required, or authorized or not prohibited, by law (including executive orders) to close and are closed, then payment of such interest or principal need not be made by the Town on such date but may be made on the next succeeding business day on which the banks in the State are open for business, but such interest shall continue to accrue until payment is received by the Owners of the Bonds.

SECTION 25. OPEN MEETING FINDINGS. It is hereby found and determined that all official acts of the Town Council concerning and relating to the adoption of this Resolution and all prior resolutions affecting the Town Council's ability to issue the Bonds were taken in an open meeting of the Town Council and that all deliberations of the Town Council or any of its committees that resulted in such official acts were in meetings open to the public, in compliance with all legal requirements, including Section 286.011, Florida Statutes.

SECTION 26. REPEALING CLAUSE. All resolutions or orders and parts thereof in conflict herewith, to the extent of such conflicts, are hereby superseded and repealed.

SECTION 27. EFFECTIVE DATE. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED this 19th day of December, 2001.

\_\_\_\_\_  
Mayor/Councilman

Attest:

\_\_\_\_\_  
Town Clerk

I HEREBY CERTIFY that I have approved the form and correctness  
of this Resolution.

\_\_\_\_\_  
Town Attorney



**EXHIBIT “A”****PROJECT LIST**

<b><u>Project</u></b>	<b><u>Amount</u></b>	<b><u>Useful Life</u></b>
Drainage Improvements	\$ 2,746,000	25 years
Communication Equipment	250,000	7 years
Computer Equipment	280,000	5 years
Fire Department Equipment	500,000	7 years
Fire Station Renovations	100,000	10 years
Fire Department Apparatus	350,000	20 years
Police Department Digital Recording System	20,000	5 years
Imaging System	72,000	7 years
Public Works Compound Expansion	65,000	10 years
Road Improvements	1,165,000	15 years
Roadway Landscaping Improvements	450,000	7 years
Public Works Tractor/Side mower	75,000	5 years
Parks & Recreation Equipment	429,000	7 years
Bergeron Rodeo Arena Roof	100,000	10 years
Recreation Facility Improvements	1,446,000	10 years
Park Land Acquisition	125,000	20 years
Potter Park Gym	1,808,000	20 years
Closing Costs	<u>19,000</u>	
TOTAL PROJECT FINANCING:	<u><u>\$10,000,000</u></u>	

The above amounts are subject to reallocation by the Town among categories or by the addition of similar categories to conform to any amendments or changes to the Town's five-year capital improvement program.